

EXHIBIT O

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789-smb

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5 SECURITIES INVESTOR PROTECTION CORPORATION,

6 Plaintiff,

7 v.

8 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC, et al.,

9 Defendants.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

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16 August 22, 2017

17 2:01 AM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: J. PEREYRA

<p style="text-align: right;">Page 18</p> <p>1 The deadline had not run.</p> <p>2 MS. FEIN: Where discovery had not run, yeah, and 3 that was decided at a later hearing in terms of making sure 4 that the cases for discovery had run as of July 7th couldn't 5 come in because in those cases discovery had closed. And 6 indeed, of the 36 adversary proceedings that are seeking to 7 join here, 28 of them discovery has closed as of when the 8 date that she requested those cases be added, which was 9 August 10.</p> <p>10 But for that procedure we noticed every good faith 11 case, including all the cases, the 36 cases here and asked - 12 - they were all permitted to participate. These cases did 13 not say they wanted to participate. We had a deadline of 14 August 5th 2016 where if you did not say by August 5th 2016 15 you wanted to participate, you were not included in the 16 deposition. And that's been the procedure and that's why I 17 know Ms. Chaitman referenced our Exhibit A. That's what 18 Exhibit A is, that the participating customers, those 19 customers that came forward and said they wanted to 20 participate in the deposition, Exhibit A, the December 29th 21 order, and I have a copy of it too.</p> <p>22 But something else that you said at the July 20th 23 hearing, I just wanted to reference really quick, and I have 24 a copy if you want to see it, but it goes to this issue of 25 when Mr. Madoff has said things since and whether that's the</p>	<p style="text-align: right;">Page 20</p> <p>1 (indiscernible) seeks to add, it'll run out by the end of 2 the year, but --</p> <p>3 THE COURT: So there are some cases where 4 discovery hasn't run its course.</p> <p>5 MS. FEIN: There are some cases where discovery 6 hasn't run out and in those cases it's really an issue that 7 the September 29th order was very clear that if you did not 8 participate, you did not request to participate, you are not 9 participating in the Madoff deposition.</p> <p>10 THE COURT: That's day one and then there was a 11 subsequent cut if you wanted to participate in day 2.</p> <p>12 MS. FEIN: Yes, and day 2 was limited to just 13 those participants that participated in day 1. So, the 14 universe of participants for day 2 was whoever participated 15 in day 1, because that was the list of parties who noticed 16 the deposition.</p> <p>17 And in terms of topics, topics were open. In 18 terms of, you know, was there an issue that there were 19 legitimate purchases after 1992, you raised that issue at 20 the August 24th hearing which preceded the order being 21 entered. You said, "Yes, it's going to be an issue that I 22 can redo the language. Yes, it's going to be an issue, the 23 strike date of the fraud. It's also going to be an issue 24 were there legitimate trades after that start date and were 25 those trades allocated to customer accounts."</p>
<p style="text-align: right;">Page 19</p> <p>1 cause for their discovery, because really for these cases 2 she's requesting additional discovery for these cases and -- 3 so it's page 26, line 16 you said, "You waited...", this is 4 last year, so July 20th 2016. "You waited until the end of 5 discovery to take Mr. Madoff's deposition, so even if he 6 wasn't in prison and you waited too long, then you said, 7 'Oh, now I need an extension of discovery because they took 8 his deposition August 30th and he told us all these things. 9 I wouldn't extend discovery for that.'"</p> <p>10 And these are cases where discovery has closed in 11 the vast majority of them. In the cases where it's been 12 left open, they chose not to participate in Mr. Madoff's 13 deposition.</p> <p>14 THE COURT: Under the September 2016 order, did 15 discovery continue to run in the cases that weren't part of 16 the participating customers?</p> <p>17 MS. FEIN: It only addresses the participating 18 customers, so it does not extend discovery for any other 19 case.</p> <p>20 THE COURT: So, discovery has run out.</p> <p>21 MS. FEIN: That's right.</p> <p>22 THE COURT: Okay.</p> <p>23 MS. FEIN: For 28 of the 36 cases it's already 24 run. It's scheduled to run out by the end of the year for 25 all 36 cases -- of the cases that she seeks to add and Ms.</p>	<p style="text-align: right;">Page 21</p> <p>1 THE COURT: I said that?</p> <p>2 MS. FEIN: Yeah. It's -- I have the cite for you.</p> <p>3 I can hand you the transcript too. So, it's page --</p> <p>4 THE COURT: Okay, I understand. Ms. Chaitman is 5 saying look, you know, basically I've been sandbagged. You 6 took the position that securities were never used or 7 customer funds were never used to purchase securities, 8 forget about the allocation issue for a moment. And now 9 Madoff testifies that that's precisely what was done.</p> <p>10 MS. FEIN: So, I think, and I wish we'd brought 11 the testimony with us, I don't think the testimony really -- 12 if that's the argument, I don't think the testimony says 13 that.</p> <p>14 THE COURT: That's the problem I'm having with 15 this whole thing. You're referring to testimony, Ms. 16 Chaitman and she's referring to testimony.</p> <p>17 MS. CHAITMAN: Let's adjourn this and let me 18 submit the testimony.</p> <p>19 THE COURT: Why don't we do this, if you want -- 20 as far as I'm concerned under the existing orders, only the 21 original -- starting with the original participating 22 customers, that was the universe that could participate in 23 day 1. Discovery continued to run as to everybody else and 24 then there was as further cut for day 2 when you had to opt 25 in.</p>